In the

Supreme Court of the United States

October Term, 1924

No. 287

THE WESTERN PACIFIC RAILROAD COMPANY,
Appellant,

vs.

THE UNITED STATES.

BRIEF FOR APPELLANT

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THE UNITED STATES.

October Term, 1924
No. 287

BRIEF FOR APPELLANT

STATEMENT OF THE CASE

This is an appeal from the Court of claims. The decision below was delivered January 7, 1924, and is as yet reported only in slip form.

During the period from September, 1914 to June 18, 1916, claimant's predecessor in title furnished transportation to the United States for five classes of passengers, to-wit:— (1) discharged soldiers, (2) discharged general military prisoners, (3) applicant for enlistment in the Army (rejected), (4) retired soldiers, (5) Army nurse. (R. 57, Finding of Fact No. XI.) Other items of transportation were originally included in the suit, but were subsequently withdrawn. (R. 57, Finding of Fact No. X.)

The Comptroller of the Treasury at the time these services were rendered held that these classes of passengers came within the term "troops of the United States", and that the United States was entitled to the same land-grant deductions for these passengers as it received for the transportation of "troops of the United States". This ruling of the Comptroller of the Treasury

was declared erroneous in *United States vs. Union Pacific Railway Co.*, 52 Ct. Cl. 226 (decided by Court of Claims, February 19, 1917); 249 U. S., 354; 63 L. ed., 643 (affirmed by United States Supreme Court March 31, 1919). (R. 58).

Bills for the services in question were submitted to the Government upon the standard forms for statement of account, prescribed by the Comptroller of the Treasury for submitting bills to disbursing officers. These bills were submitted to disbursing officers of the United States. All bills were stated with land-grant deductions. (R. 58). But there was typewritten on each of the bills the following statement or protest:

> "As United States Government accounting officers claim they have no authority to allow or pay for the transportation of (here is typewritten the class of travel objected to) more than the fares for troops of the United States, such fares are shown hereon but under protest, and the Western Pacific Railway Co. for itself and connecting carriers does not waive (?) of its rights to full published tariff fares and payment of any less amount will be accepted as part payment only for the services performed."

The disbursing officers to whom these bills were presented made payment of the amount shown by the bills to be due by the United States on the basis of land-grant deductions. (R. 56, Finding of Fact VIII.)

This suit was brought to collect the balance due for the transportation in question.

An incidental matter, mentioned but not passed upon by the Court below, is the fact that claimant acquired on July 14, 1916 at receiver's sale all the property and assets of another corporation by the same name which had previously owned and operated the railroad now owned by claimant. (R. 53, Finding of Fact III; R. 57.)

The latest item remaining in this suit bears date June 18, 1916. The lower Court intimated that this action was

barred by the three year limitation found in Section 424 of the Transportation Act of 1920, which became a law on February 28, 1920, more than three years after June 18, 1916. (R. 63).

SPECIFICATION OF ERRORS

1. The error of the lower Court in holding that the payment by the disbursing officer amounted to an accord and satisfaction of the total transportation charges.

2. The error of the lower Court in holding that a Federal disbursing officer exercises merely ministerial duties, and was without authority to make payment of the undisputed portion of the total demand except as a discharge of the total demand.

3. The error of the lower Court in referring to the three year limitation on actions by carriers to recover transportation charges prescribed by the Transportation Act of 1920 as a bar to this action.

4. The error of the lower Court in suggesting that Section 3477 R. S. might be applicable to this action.

5. The error of the lower Court in dismissing the petition herein.

ARGUMENT

I

NO ACCORD AND SATISFACTION OF CLAIMANT'S DEMAND

This case involves strictly a business transaction. Services had been performed at the request of the United States for which compensation was due. The part payment made upon the transportation charges, which charges were a mere matter of mathematical calculation whether computed on land-grant rates or on tariff rates, is controlled by the same law that governs between individuals.

Cooke vs. U. S., 91 U. S., 389, 398; 23 L. ed., 237, 243.
U. S. vs. Bostwick, 94 U. S., 53, 66; 24 L. ed., 65, 66.
McKnight vs. U. S., 98 U. S., 179, 186; 25 L.ed. 115, 116.

Bill for these services was presented to the disbursing officer. On the face of this bill there appeared a notice or protest stating that whatever payment might be made less than full published tariff fares "will be accepted as part payment only for the services performed". (R. 56).

No compulsion existed whereby the United States was forced to make payment of this bill. Payment of the bill as rendered was made, and such payment must have been made subject to the expressed conditions. The United States was expressly and explicitly notified that such payment would be accepted only as part payment. It could have returned the bill and declined to have accepted the condition attached to payment. The situation was, in effect, an offer to accept a part payment on account. This offer could have been declined or accepted. Defendant *elected* to accept.

If any estoppel resulted from this situtation, the estoppel would be upon the United States. It acted with knowledge that the payment would not be accepted as payment in full. Nevertheless, it elected to make a part payment. This *election* can not now be repudiated.

Defendant does not and can not contend that it has been misled in the slightest degree. Its act in making part payment was voluntary and with full knowledge that the claimant would bring this suit for the balance unpaid.

The expressed terms and conditions attaching to the payment can no more be altered at this late date than can the terms and provisions of a formal contract. For this Court to decline to give effect to the condition or protest, would be to annul a contractual *status* entered into by the parties.

It is now admitted that claimant was due to be paid in full as claimed herein. Yet defendant attempts to hide behind a part payment. Certainly it is not unjust to award claimant its full rights.

There is no attempt by defendant to show that either party intended the payment as an accord and satisfaction. No receipt in full satisfaction of the total demand was given or called for.

This is not a question of splitting a cause of action. Claimant could not *sue* for part of a claim, and after recovering this, then sue for the alleged balance. The claim would have been merged in the judgment. But *a creditor may always go to a debtor and collect as much of his claim as the debtor will pay*, and unless an accord and satisfaction has been effected, the creditor may then sue for the balance.

In *Attorney General vs. Supreme Council, A. L. H.*, 196 Mass. 151; 81 N. E. 966, the Supreme Court of Massachusetts discussed many principles here applicable. One of the issues before the Court was to determine whether

under the law of New York, an accord and satisfaction had resulted of a five thousand dollar claim under a beneficiary certificate, where claimant's attorney in accepting nineteen hundred dollars, said in substance: 'We accept the draft as payment on account only, and do not waive our rights to the full amount,' signed a receipt that the amount was " two-fifths of the amount herein agreed agreed to be paid, less five per cent ", and the words " for cancellation " were stricken through at the end of the receipt, that " this certificate is hereby surrendered . . . . . for cancellation." The Court held that acceptance of the nineteen hundred dollars under these circumstances did not give rise to an accord and satisfaction. The case of *Komp vs. Raymond*, 175 N. Y. 102; 67 N. E. 113, was cited as stating the New York law.

In *Mitterwallner vs. Supreme Lodge, Knights and Ladies of the Golden Star*, 109 App. Div. 70; 95 N. Y. Sup. 1090, 1094, the Appellate Division of the Supreme Court of New York declared:

> "The plaintiff made a demand on the defendant for $1,000, as the benefit she was entitled to receive upon the death of her husband, and the defendant stated that they admitted there was due a certain sum, and offered to pay that sum. She accepted that sum, and signed the receipt under protest. It was proved that the receipt contained a statement that the amount paid was in full under the certificate; but the addition of the plaintiff to that statement that it was received under protest was a distinct statement that the plaintiff protested against the sum being received in full for her claim. Under any circumstances, the receipt was not a contract, and the testimony of the plaintiff, taken in connection with the protest made by her, would sustain a finding that the receipt of a part of the money was not to be considered as an accord and satisfaction of the plaintiff's claim, but was a simple willingness to accept on account what the defendant conceded to be due to her."

In the opinion in this case the Court set forth very clearly the facts and holding in *Komp vs. Raymond, supra,* in the following language:

> "In *Komp v. Raymond,* 175 N. Y. 102; 67 N. E. 113, there was evidence of a contract by which the defendant employed the plaintiff to render services in the Empire of Japan, the plaintiff to receive therefore a certain number of dollars per year, a portion of which was to be paid each month in Japan; the balance to remain with the defendant until the termination of the agreement, at 6 per cent interest. Upon the final termination of the employment, there was a dispute between the plaintiff and the defendant as to whether the plaintiff was to be paid for his services in Japanese yens or in American dollars; Japanese yens being worth about 50 cents in American currency. At the time this question arose, the plaintiff claimed to be entitled to about $7,000 American money, while the defendant claimed that he was entitled to only $1,250. That question being in dispute, the defendant offered to pay the plaintiff the amount according to his construction of the contract, when the plaintiff, according to his testimony, said:
>
> > " 'You pay me this money, and I will sign this receipt. If I can show or bring proof to you and convince you that you are wrong in having me sign this — insisting on my signing this — when I claim that it should be settled in dollars, will you pay me the balance of $5,715? I will sign the receipt on these conditions, if you will make that agreement with me.'
>
> "To this the defendant's representative replied: 'Yes; that seems fair,' and the plaintiff then said: 'Now, if you do not pay me that balance, I will take the thing to court, and we will leave it to a court and jury to settle.' The defendant's representative replied: 'That won't be necessary; I will agree to that.' The plaintiff then said: 'Now, you understand if you don't pay me that balance, that I shall take the whole thing to court for settlement,' to which the defendant's representative replied, 'All

right,' and the plaintiff took the check, and signed the receipt. This receipt was as follows:

> "'Rec'd payment, March 3rd, 1896, twelve hundred and fifty dollars, being full payment of his contract expiring Jan. 1, 1896, with salary, int., and allowance, besides closing his acct. to March 1, 1896.'

"This court held that that receipt amounted to a release of the remainder of the defendant's indebtedness to the plaintiff. This, however, was reversed by the Court of Appeals, and it was held that this receipt was nothing more than an admission of the receipt of a certain amount of money in full for certain services and allowances, which closed the plaintiff's account; that although the receipt in form stated that it was received in full payment under the plaintiff's contract, and closed his account with the defendant, it was a mere admission of a past transaction or of an existing fact; that it was a mere acknowledgment that an amount of money had been received by the plaintiff in full payment of his account, and should be regarded as a receipt only, and not as a contract; that such a receipt is only a declaration that a sum has been paid in full of all claims of a certain kind, or of all demands; that such receipts furnish only prima facie evidence, and are valuable only as such; and it was held that, notwithstanding the form of this receipt, there was no final adjustment of the accounts between the plaintiff and the defendant, but that the plaintiff still retained the right to legally enforce the remainder of his demand."

Another discussion of the principles, both of business and of law, which apply to a situation of the kind under consideration, is found in *Locomobile Co. vs. Nichols*, 153 N. Y. Sup. 227, 229, in which the Appellate Division of the Supreme Court of New York said:

> "The one defense which seems to call for consideration rests upon the following facts: It was on October 20, 1911, that defendant sent his check to plaintiff. As already said, plaintiff at once pro-

tested to the amount, and began active negotiations to induce defendant to pay more. There never was any question but that plaintiff was entitled at all events to the amount represented by the check. Pending these negotiations plaintiff held the check and did not deposit it for collection until April 4, 1912, when it was paid. The defendant now insists that the retention and deposit of this check operated as an accord and satisfaction. To support this defense he relies upon *Fuller v. Kemp*, 138 N. Y. 231; 33 N. E. 1034; 20 L. R. A. 785, and *Nassoiy v. Tomilson*, 148 N. Y. 326; 42 N. E. 715; 51 Am. St. Rep. 695, both of which had to do with claims wholly unliquidated. Both of these cases were examined and distinguished in *Eames Vacuum Brake Co. v. Prosser*, 157 N. Y. 289; 51 N. E. 986, the court saying:

> " 'In these cases the doctrine of accord and satisfaction was carried to the extreme limit, and it is not our purpose to further extend the rule.'

"The case last cited was similar to the present in this: That the controversy was between a principal and its agent; that the agent had collected money belonging to the principal, and had paid over a sum concededly due, retaining a further sum claimed to be due for commission, which claim, however, the principal repudiated; that the principal kept and retained the amount paid over to it, as well as statements on account showing the amount collected, the amounts paid over, and the amounts retained for commissions claimed. The court, after discussing the general principles of an account stated, said:

> " 'Ordinarily the retention of a check enclosed in a letter, which refers to the amount as a balance due on accounts between the parties, will not be held to be an accord and satisfaction so as to bar an action for the balance due. *McKay v. Myers*, 168 Mass. 312 (47 N. E. 98); *Day v. McLea*, L. R. 22 Q. B. Div. 610. It is only in cases where a dispute has arisen between the parties as to the amount due and a check is tendered on one side in full satisfaction of the matter in controversy that

> the other party will be deemed to have acquiesced in the amount offered by an acceptance and a retention of the check. *Nassoiy v. Tomlinson, supra; Fuller v. Kemp, supra.* In this case the defendants were engaged in collecting money for the plaintiff; their character was that of agents. From time to time they remitted balances to the plaintiff. It was the plaintiff's money. It objected early to the retention of commissions by the defendants, and continued such objection through several months, to nearly every account rendered in which commissions were charged. We think that the court below properly held that no accord and satisfaction were established.' "

An accord and satisfaction includes two distinct essentials: (1) the accord, which is an agreement of the parties in the nature of an offer of compromise, and (2) payment of the amount agreed to be paid and accepted in satisfaction of the accord. Obviously there can be no *satisfaction* without there having first been an *accord.*

We quote from *Fire Insurance Association vs. Wickham,* 141 U.S. 564, 577; 35 L. ed., 860, 866:—

> "As was said by Chief Justice Waite in *United States v. Bostwick,* 94 U. S. 53, 67 (24: 65, 66): 'Payment by a debtor of a part of his debt is not a satisfaction of the whole, except it be made and accepted upon some new consideration;' although it was subsequently held in *Baird v. United States,* 96 U. S. 430, (24: 703), that if the debt be unliquidated and the amount uncertain, this rule does not apply. 'In such cases the question is, whether the payment was in fact made and accepted in satisfaction.' The authorities upon this point are numerous and decisive."

Reviewing now the cases cited by the lower Court, we find that in so far as they are in point, they support our contention rather than detract therefrom.

In *Savage vs. United States,* 92 U. S. 382; 23 L. ed., 660, claimant had held certain Treasury notes, which he

claimed were payable in gold. The Secretary of the Treasury refused payment in gold. Claimant accepted an offer made by the Secretary of the Treasury that claimant surrender the notes and receive payment in legal tender. This Court held that the voluntary acceptance by claimant of this offer was a waiver of a protest made when the notes were surrendered, which surrender was understood by both parties to have been absolute and unconditional. The case is wholly unlike the instant situation. No offer was made to present claimant. On the contrary so far as there was an offer, it moved from the claimant to the United States and any acceptance of an offer herein was on the part of the United States. Furthermore no surrender of notes or anything comparable thereto was made herein.

United States vs. Child, 12 Wall. 232; 20 L. ed., 360, involved the effect of a finding by a commission appointed to adjust an account and held that the acceptance of the finding was conclusive. The case is not here in point. No matter of protest was in any involved.

In *Sweeney vs. United States*, 17 Wall. 75, 21 L. ed. 575, and in *De Arnaud vs. United States*, 151 U. S. 483; 38 L. ed. 244, claimant accepted an offer of compromise and executed a release in full. This was held to bar action for further recovery on the account so settled. There was no question of protest in either case.

In *United States vs. Justice*, 14 Wall. 535; 20 L. ed. 753, the acceptance without protest of the finding of arbitrators was held a bar to further recovery. However in that case this Court declared (Page 549):—

> "It is always in the power of parties to compromise their differences. One way of doing this is by arbitrators, mutually chosen; but from such submission neither party is at liberty to withdraw after the award is made. The condition of the government creditor is better than this, for if dissatisfied with the allowance made him by the commission, he

> can refuse to receive it, or can accompany his receipt of it, if he chooses to take it, with a *proper protest.* (Italics ours.) This protest is necessary to inform the government that the compromise is rejected, and that this rejection leaves the claimant free to litigate the matter in dispute before the Court of Claims. If with this knowledge and under these circumstances the money is paid, there can be no just cause of complaint on either side and the status of the parties is not affected by any thing which transpired before the commission."

In *Pacific Railroad vs. United States*, 158 U. S. 118; 39 L. ed. 918, claimant accepted payment of the principal sum found due by a judgment of the Court of Claims, payment of which had been provided by Act of Congress which stipulated that the payment should be in full satisfaction of the judgment. This was held to bar a subsequent action to recover interest on the judgment. No question of protest appears in the case.

In *Chicago, Milwaukee and St. Paul Railway Co. vs. Clark*, 178 U. S. 353, 44 L. ed. 1099, a receipt "in full satisfaction of all claims and demands of every kind, name, and nature" arising from a certain contract was held to bar recovery of a sum in addition to that paid when the receipt was given. No protest or reservation of any kind was incorporated in the receipt.

In *Baird vs. United States*, 96 U. S. 430, 431; 24 L. ed. 703, 704, this Court said:—

> "It is, no doubt, true that the payment by a debtor of a part of his liquidated debt is not a satisfaction of the whole, unless made and accepted upon some new consideration; but it is equally true, that, where the debt is unliquidated and the amount is uncertain, this rule does not apply. In such cases the question is, whether the payment was in fact made and accepted in satisfaction."

The Court held that the payment there under consideration had been *made and accepted* in satisfaction of an unliquidated demand.

The New York cases referred to by the lower Court have been subsequently declared by the New York Courts to state the extreme limit to which those Courts were willing to go. (See Page 9 of this brief). The New York cases cited by the lower Court herein are clearly distinguishable from the instant facts. *Fuller vs. Kemp*, 138 N. Y. 231, was an action by a physician to recover for services rendered. There was a dispute over the amount of the physician's bill. The debtor had sent the physician a check for what he was willing to pay, and had noted thereon that the check was in full payment for the bill. This check was accepted by the physician. No question of protest appears. The amount which the physician was entitled to charge was in no sense determined by any definite contract or rule of law similar to that controlling railroad rates. *Nassoiy vs. Tomlinson*, 148 N. Y. 326, presents a similar situation, excepting that the bill there considered was for commissions.

In *Baltimore and Ohio Railroad Company v. The United States*, 52 Ct. Cl. 473, and *Oregon-Washington Railroad and Navigation Company v. The United States*, 54 Ct. Cl. 145, 255 U. S. 339, the lack of any protest whatsoever at time of settlement is stressed in the decisions of the Court. The decisions are not applicable here, where emphatic protest was placed on the bills when originally presented.

One particularly glaring statement in the opinion of the lower Court which is contrary to the facts should be noted. Said the lower Court, referring to the notice or protest: "The alleged notice remains unnoticed until, as in the instant case, six or more years elapsed from the time of some of the payments". (R. 63). In the first place, this protest necessarily was brought to the attention of the disbursing officers. In the second place, when the bills containing the protest were forwarded by the disbursing officers to the accounting officers, the protest necessarily was

brought to the attention of the accounting officers in their audit of the disbursing officers' accounts. In the third place, claimant brought the matter to the attention of the accounting officers in June, 1920, in an effort to have these officers rectify the wrong occasioned by their former erroneous ruling. (R. 56, Finding of Fact IX).

In the instant case we have a liquidated demand, coupled with a definite reservation of the right to seek recovery of that portion of the demand not covered by the payment. There is nothing to show the slightest intention that the partial payment made was to be in complete satisfaction. The showing is all to the contrary.

It is submitted that the form of protest was ample for the purpose intended, and that there has been no accord and satisfaction herein.

II

CLAIMANT IS NOT TO BE PENALIZED FOR A PROPER EXERCISE OF DISCRETION BY A DISBURSING OFFICER

The payment on account was made by a disbursing officer. The status of disbursing officers has never been announced by this Court. Little has been said upon the matter by any Court. These officers have continued for over a century to perform valuable public services without their authority being defined. To determine this, a chronological review of the origin and development of Federal disbursing officers is indispensable.

The use of disbursing officers in the fiscal system of the Federal Government began as a practice or custom. The Comptroller of the Treasury in *4 Comp. Dec. 334*, states:—

> "It appears to have been originally designed that no demand for the payment of money by the United

> States should be paid until a claim or account therefor had been audited and certified by the accounting officers. But early in the history of the Government a practice grew up, without express authority of law, of employing agents to disburse moneys appropriated for various objects. Subsequently disbursing officers were expressly authorized by statute, and in 1853 were provided for the several Departments. (Sec. 176, *Rev. Stat.*)"

An early statute impliedly sanctioning the use of these officers is the *Act of January 31, 1823* (See Sec. 3648, *R. S.*) Section 1 of this Act as it stands today is found in 8 *Fed. Stat. Ann., 2d. Ed.*, 903, as follows:—

> "Sec. 3648. (ADVANCES OF PUBLIC MONEYS PROHIBITED.) No advance of public money shall be made in any case whatever. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment. It shall, however, be lawful, under the special direction of the President, to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfillment of the public engagements. The President may also direct such advances as he may deem necessary and proper, to persons in the military and naval service employed on distant stations, where the discharge of the pay and emoluments to which they may be entitled cannot be regularly effected. (*R. S.*)"

Soon after the passage of the *Act of January 31, 1823*, the President authorized and directed "advances of money, from time to time to various classes of disbursing officers of the Government." *Williams vs. U. S.*, 1 How. 290, 298, 11 L. ed., 135, 138.

Three cases were decided by this Court in the year 1831 declaring certain officers to be disbursing officers. In *U. S. vs. Tingey*, 5 Pet. 115, 127; 8 L. ed. 66, 71, a

purser in the Navy appointed in 1812 was declared a disbursing officer. In *Smith vs. U. S.*, 5 Pet. 292; 8 L. ed. 130, a paymaster in the Army appointed prior to February 7, 1810, was recognized as a disbursing officer. In *Farrar vs. U. S.*, 5 Pet. 373, 388; 8 L. ed. 159, 165, a surveyor of public lands appointed prior to August 7, 1823, was declared a disbursing officer.

Section 6 of the *Act of August 6, 1846* (See Section 3639 *R. S.*), one of the Independent Treasury Acts, contains provisions which with subsequent modifications are to be found in 8 *Fed. Stat. Ann 2d. Ed.*, 899, as follows:—

> "Sec. 3639. (DUTIES OF OFFICERS AS CUSTODIANS OF PUBLIC MONEYS.) The Treasurer of the United States, all assistant treasurers, and those performing the duties of assistant treasurer, and all collectors of the customs, all surveyors of the customs, acting also as collectors, all receivers of public moneys at the several land-offices, all postmasters, and all public officers of whatsoever character, are required to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as specially allowed by law, all the public money collected by them, or otherwise at any time placed in their possession and custody, till the same is ordered, by the proper Department or officer of the Government, to be transferred or paid out; and when such orders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the Government, which may be imposed by any law, or by any regulation of the Treasury Department made in conformity to law. The President is authorized, if in his opinion the interest of the United States requires the same, to regulate and increase the sums for which bonds are, or may be, required by law, of all district attorneys, collectors of customs, naval officers, and surveyors of customs, navy agents, receivers and registers of public lands, paymasters in the Army, commissary-general, and by all other officers employed in the disbursement of the public moneys,

under the direction of the War or Navy Departments. (*R. S.*)"

The statute referred to by the Comptroller of the Treasury as having been passed in 1853 is the *Act of March 3, 1853*. This Act is an appropriation act, and also an act reorganizing the executive departments. Section 3 makes specific provision for disbursing clerks in the departments. This section was carried forward with modifications as Sec. 176 *R. S.*, and with subsequent modifications is found in 3 *Fed. Stat. Ann. 2d. Ed.*, 254 and reads:—

"SEC. 176. (DISBURSING CLERKS.) The disbursing clerks authorized by law in the several Departments shall be appointed by the heads of the respective Departments, from clerks of the fourth class; and shall each give a bond to the United States for the faithful discharge of the duties of his office according to law in such amount as shall be directed by the Secretary of the Treasury; and shall from time to time renew, strengthen, and increase his official bond, as the Secretary of the Treasury may direct. Each disbursing clerk, except the disbursing clerk of the Treasury Department, must, when directed so to do by the head of the Department, superintend the building occupied by his Department. Each disbursing clerk is entitled to receive, in compensation for his services in disbursing, such sum in addition to his salary as a clerk of the fourth class as shall make his whole annual compensation two thousand dollars a year. (*R. S.*)."

Consequent upon the original enactment of this last statute, the Comptroller of the Treasury addressed a letter to the President of the United States as follows, (this letter and the action of the President thereon may be found in Appendix to the First Volume of the *Decisions of the First Comptroller of the Treasury*, William Lawrence, at Pages 629-630): —

"Treasury Department,
Comptroller's Office,
March 21, 1853.

TO THE PRESIDENT OF THE UNITED STATES.

Sir: The power to make advances of money to officers and agents having heretofore been granted under special circumstances; to remove therefore all inconvenience which may rise from any uncertainty or doubt upon the subject, I have the honor to ask, in conformity with the authority for this purpose which is given to the President of the United States by the provisions of an act of Congress entitled 'An act concerning the disbursement of the public money,' approved January 31, 1823, that you will authorize by your direction such advances as the interest of the civil service may from time to time require, viz: (Here is set forth an extended list of disbursing officers.)"

The President upon receipt of the foregoing letter gave direction as follows:—

"Washington, March 22, 1853.

I hereby direct that such advances be made from time to time to the disbursing officers above named as may be necessary to the faithful and prompt discharge of their respective duties and to the fulfillment of the public engagements; but in no case where the agent is to give security shall the amount in his hands at any one time exceed the amount of his security.

FRANKLIN PIERCE."

Next came the *Act of July 17, 1862* (See Sec. 3622 *R. S.*). This Act with subsequent modifications may be found in 8 *Fed. Stat. Ann. 2d. Ed.*, 888, and reads:—

"Sec. 3622. (ACCOUNTS). Every officer or agent of the United States who receives public money which he is not authorized to retain as salary, pay, or emolument, shall render his accounts monthly. Such accounts, with the vouchers necessary to the correct and prompt settlement thereof, shall be sent by mail, or otherwise, to the Bureau to which they pertain, within ten days after the expiration of

each successive month, and, after examination there, shall be passed to the proper accounting officer of the Treasury for settlement. Disbursing officers of the Navy shall, however, render their accounts and vouchers direct to the proper accounting officer of the Treasury. In case of the non-receipt at the Treasury, or proper Bureau, of any accounts within a reasonable and proper time thereafter, the officer whose accounts are in default shall be required to furnish satisfactory evidence of having complied with the provisions of this section. Nothing herein contained shall, however, be construed to restrain the heads of any of the Departments from requiring such other returns or reports from the officer or agent, subject to the control of such heads of Departments, as the public interest may require. (R. S.) "

The *Act of May 9, 1866* (See Sec. 1059 and Sec. 1062 *R. S.*) is known as the "*Disbursing Officers' Act*". 39 *Cyc.* 72. The provisions of this Act are now found in Sections 145 and 147 of the *Judicial Code*, and provide:—

"Sec. 145. (JURISDICTION). The Court of Claims shall have jurisdiction to hear and determine the following matters:

* * * * *

"Third. (DISBURSING OFFICERS.) The claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer of the United States, or of his administrators or executors, for relief from responsibility on account of loss by capture or otherwise, while in the line of his duty, of Government funds, vouchers, records, or papers in his charge, and for which such officer was and is held responsible."

Sec. 147. (DECREE OF ACCOUNTS OF DISBURSING OFFICERS.) Whenever the Court of Claims ascertains the facts of any loss by any paymaster, quartermaster, commissary of subsistence, or other disbursing officer, in the cases hereinbefore provided, to have been without fault or negligence on the part

of such officer, it shall make a decree setting forth the amount thereof, and upon such decree the proper accounting officers of the Treasury shall allow to such officer the amount so decreed as a credit in the settlement of his accounts."

Section 1 of the *Act of June 14, 1866* (See Sec. 3620 *R. S.*) with subsequent modifications is set forth in 8 *Fed. Stat. Ann. 2d. Ed.*, 886, and reads:—

> "Sec. 3620. (DUTY OF DISBURSING OFFICERS). It shall be the duty of every disbursing officer having any public money intrusted to him for disbursement, to deposit the same with the Treasurer or some one of the assistant treasurers of the United States, and to draw for the same only as it may be required for payments to be made by him in pursuance of law and draw for the same only in favor of the persons to whom payment is made; and all transfers from the Treasury of the United States to a disbursing officer shall be by draft or warrant on the Treasury or an assistant treasurer of the United States. In places, however, where there is no treasurer or assistant treasurer, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any other public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors. (*R. S.*)"

In a *Circular of Instructions* to certain disbursing officers, dated March 25, 1878, and issued by John Sherman, Secretary of the Treasury, (this circular may be found at Page 636 of the Appendix to the *First Volume of the Report of William Lawrence as First Comptroller*) is found this paragraph:—

> "Before making payment of any voucher, the disbursing agent should give it careful scrutiny to see that it is in proper form, that its computations are correct, that the expenditures are incurred under proper authority, that the prices are charged in ac-

cordance with contract rates; and when any fact comes to the knowledge of the disbursing agent tending to show that the services or supplies charged for have not been actually rendered or delivered, or are not at fair or contract prices, or that the expenditure is extravagant or unauthorized, it will be his duty, notwithstanding the voucher therefor may bear the certificate of the superintendent, to withhold payment and report the case to the Department for instructions. Vouchers will bear no credits by way of return or sale of public property of any kind; such property, when disposed of, must be sold for cash, and the proceeds deposited according to law."

In the case of *M'Knight vs. U. S.*, 13 Ct. Cl. 292, 304 (decided 1878), affirmed 98 U. S. 179; 25 L. ed., 115, Richardson, J., said:—

"Vast sums of money are paid to parties for salaries and on other accounts by disbursing officers before the claims have passed the Treasury accounting, and the number of such officers is large, their appointments being provided for by special or general provisions of statute. (*Rev. Stat.*, Sec. 56-58, 62, 176, 255, 496, 1153, 1382, 1550, 1563, 1765, 1951, 3144, 3646, 3648, 3658, 3677, 4839, etc.,). They are all under bonds, and responsible for the legality and correctness of their payments. Their accounts are finally settled through the accounting officers, and every item charged therein is subject to examination and adjustment, as are all other demands, and only such are allowed as are found to be sufficiently vouched for and to have been legally and rightly paid. All others are rejected, and the disbursing officer and his bondsmen are held liable for any balances found against him on such settlement. (*Rev. Stat.*, Sec. 3622-3625; *McKee vs. U. S.*, 12 C. Cls. R., 553)."

The Comptroller of the Treasury further explaining the functions of disbursing officers, states, (*4 Comp. Dec. 334*):—

"Since that time (1853) the practice has existed in the several Departments of paying the salaries of officers and employees, and various bills for supplies purchased and other expenses, through those disbursing officers, whose accounts for such disbursements have been subsequently audited. As a result of this practice, it sometimes happened that a payment which had been made by a disbursing officer was disallowed in the audit of his accounts, for the reason that the expenditure was not authorized by law. To protect the Treasury and disbursing officers from loss the following provision was made by section 8 of the *act of July 31, 1894* (28 Stat., 208):

> " 'Disbursing officers, or the head of any Executive Department . . . may apply for and the Comptroller of the Treasury shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern the Auditor and the Comptroller of the Treasury in passing upon the account of said disbursement.' "

The term *disbursing officer* signifies one who pays out money. Aside from statutes in such general terms as the foregoing, there can be found no definition of the duties of Federal disbursing officers, except in isolated cases, not here material. Nowhere is there any limitation declaring the payment now under consideration to have been unauthorized. On the contrary, after the forms of vouchers made a part of the finding of fact below had been promulgated by the Comptroller (this was done under date of June 19, 1915 by *Treasury Circular, No. 49;* see *14 Comp. Dec. 945*), the Comptroller of the Treasury found disbursing officers so reluctant to honor this variety of vouchers without first submitting them to the Comptroller, that an amendment to Circular 49 was issued as follows, being *Treasury Circular No. 212*, and found in *27 Comp. Dec. 1091*:—

"Treasury Department,
Office of the Comptroller of the Treasury,
Washington, November 20, 1920.

TO WHOM IT MAY CONCERN:

Attention is directed to Treasury Department Circular No. 49, dated June 19, 1915, in which forms for transportation accounts were prescribed for general use throughout the various departments and independent establishments of the Government in lieu of those prescribed and published by former Treasury Department Circulars.

It appears that it has become the practice in some departments and independent establishments to forward bills covering passenger transportation to the auditors of the Treasury for settlement. This involves a large amount of clerical and record work in the processes of settlement and payment by Treasury warrant and a delay in making payment to the carriers.

It was not contemplated by Department Circular No. 49 that disbursing officers should be relieved of the duty of paying passenger transportation accounts in ordinary cases where vouchers in proper form are presented to them and no doubt arises as to the legality of payment. Hereafter such vouchers should be paid by disbursing officers when in proper form, properly substantiated and certified and not be referred to the auditors for settlement.

"A disbursing officer may exercise his right to request an advance decision from the Comptroller of the Treasury in cases where doubt arises as to legality of payment, in accordance with the rules established for that purpose, or may refuse to make payment when in his judgment payment is clearly not due. When payment is apparently due in some amount, but questions arise which require adjudication, the establishment of facts, or production of further evidence, the bill may be referred to the proper auditor for settlement with a statement of the reasons for such action. Where payment has been re-

fused by a disbursing officer the claimant may exercise the right to file claim with the proper auditor, which will be received and settled in the usual course. But where no reason exists for requesting an advance decision or for refusal to make payment upon vouchers presented, disbursing officers should make payment in the usual course.

"The Transportation Rate Board, which has been established as a clearing point for all transportation claims and accounts, is authorized to adjust direct with carriers any overpayments which may be found upon settlement of disbursing officers' accounts, but this authorization can not be regarded as relieving disbursing officers of their liability under the law.

"It is requested that in accounts which contain a large number of payments for transportation charges a separate abstract be rendered to cover transportation payments alone, or that an abstract be rendered in two parts, one of which shall cover transportation payments alone.

W. W. WARWICK,
Comptroller of the Treasury.

Approved:
D. F. HOUSTON,
Secretary of the Treasury."

Federal disbursing officers necessarily exercise a wide discretion in the performance of the duties. They are not ministerial officers, without discretion. The very lack of detailed definition of their duties and functions requires the constant exercise of discretion. Section 8 of the *Act of July 31, 1894*, providing that disbursing officers *may* apply to the Comptroller of the Treasury for a decision upon questions of payment, is nothing more nor less than a method for assisting disbursing officers in the exercise of their discretion. Whether or not the decision of the Comptroller of the Treasury will be applied for in a particular situation is discretionary with the disbursing officer.

The greatest check, and it is an adequate one, upon an undue assumption of authority by disbursing officers in the expenditure of public money is the frequent and periodic rendering of their accounts for audit by the accounting officers, the disallowance by the accounting officers of any unwarranted expenditures, and the liability under the official bond for unauthorized disbursements. The evident purpose of Congress with respect to providing limitations on disbursing officers has been primarily and principally by defining the scope and functions of the accounting officers. Vastly more legislation has bee enacted governing accounting officers than governing disbursing officers. (See *The Accounting System of the United States from 1789 to 1910* prepared under the direction of the chairman of the Committee on Auditing, Treasury Department, this publication being *Treasury Department Document 2603*, published by Government Printing Office, 1911. See also the *Budget and Accounting Act of 1921*, being the *Act of June 10, 1921*, 42 *Stat.* 20.)

In *The Government Accountant*, Volume 2, No. 2, for June, 1908, on page 43 appears an article entitled *The Disbursing Office: Its Operation and Records*, by William L. Soleau, Disbursing Clerk Department of Commerce and Labor. On page 44, the writer states:

> "The fact that payments by disbursing clerks of vouchers submitted to them, approved by the Secretaries of the Departments under whom they are employed, does not insure credit for the payments by the accounting officers of the Treasry in the settlements of the accounts; and that the disbursing officers are liable under their bonds, for the amounts of such vouchers so approved, should the accounting officers determine that the payments are contrary to the terms of Acts of Congress making the appropriations, the operation of the Disbursing Officer becomes difficult and requires of the disbursing officer the exercise of sound judgment in determin-

ing how far he will accept the approval of the approving officer to justify the payment.

> "The disbursing officer's resposibilities moves him out of the class known as 'cashiers' whose duties are to draw checks in payment of vouchers presented to them for payment, relying entirely upon the approvals appearing in them to justify his acts."

In *Kendall vs. Stokes*, 3 How. 87, 97-98; 11 L. ed. 506, 511-512, the withholding of payment to a claimant was held to be a discretionary act for which a public officer could not be held liable in an action for damages. Said this Court:

> "We are not aware of any case in England or in this country in which it has been held that a public officer, acting to the best of his judgment and from a sense of duty, in a matter of account with an individual, has been held liable to an action for an error of judgment."

> "It repeatedly and unavoidably happens, in transactions with the Government, that money due an individual is withheld from him for a time, and payment suspended in order to afford an opportunity for a more thorough examination. Sometimes erroneous constructions of the law may lead to a final rejection of a claim in cases where it ought to be allowed. But a public officer is not liable to an action if he falls into error in a case where the act to be done is not merely a ministerial one, but is one in relation to which it is his duty to exercise judgment and discretion."

No accounting officer in auditing the account of the disbursing officer who paid the bill in question could charge this payment back to the disbursing officer. It was at all times agreed by everyone that the amount of the payment was due and owing. The issuance of check by the disbursing officer was within the scope of his office, and, to say the least, a proper exercise

of discretion. Claimant received money owing to it, and an indebtedness of the Government had been reduced. The rights of neither party should be prejudiced thereby. Claimant is not to be penalized for seeking payment of that portion of his claim over which there was no dispute.

The voucher submitted to the disbursing officer was not intended to mislead, did not mislead, and could not have done so. The voucher must be read and interpreted from its four corners. The transportation services had been furnished. The certificate that the bill was "correct and just," when read in conjunction with the explanatory note or protest, was perfectly clear to every person examining it. "There was nothing contrary to good morals or conscience in the payment or receipt of the money. The facts were all known. There was no indirection, concealment or improper purpose on either side." *McKnight vs. U. S.*, 98 U. S., 179, 185-186; 25 L. ed. 115, 116.

A charge that the disbursing officer exceeded his authority in paying that portion of the total transportation which was undisputed can not be manufactured out of thin air. This Court has repeatedly held the presumption to be to the contrary. "There is always a presumption that official acts or duties have been properly performed." 22 *C. J.* 130 *et seq.*; 22 *R. C. L.* 472 *et seq.*

The limitations sought to be imposed on disbursing officers by the lower Court are nothing short of judicial legislation. They are unsupported by authority other than judicial pronouncement in this and companion cases. They have never before been announced.

The desirability of finality in Government accounting is wholly aside from this case. Any payment by a disbursing officer on a Government indebtedness will be reflected in the account of the disbursing officer,

whether the payment be a full or a partial payment. The fact that a particular payment is a partial payment can not interfere with the preparation of "an accurate, combined statement of the receipts and expenditures of public moneys" (R, 61) which the Secretary of the Treasury is required to submit to Congress each year.

Just as much interference with the expenditures of the Government would be occasioned by every judgment entered by the Court of Claims against the United States as by a judgment for claimant in this case. Special appropriations are made by Congress to pay these judgments.

Our system of Governmental budgeting, accounting and expenditures has not reached the "finality" stage of perfection. Acts providing deficiency appropriations are passed at every session of Congress.

We submit that the partial payment made by the disbursing officer is no bar to recovering the balance due claimant.

III

NO ASSIGNMENT HEREIN WITHIN SECTION 3477, REVISED STATUTES

Another suggestion made by the lower Court, but not decided, is that the acquisition by claimant at receiver's sale of the assets of a former owner of claimant's railroad might constitute an assignment within the meaning of Section 3477 *R. S.* (R. 57).

The transfer of the claim to claimant, was not a voluntary transfer. This distinguishes the case of *St. Paul and Duluth Railroad Company vs. United States,* 112 U. S. 733; 28 L. Ed. 861, which was a voluntary transfer, in the form of a mortgage.

The appointment of a receiver to take over the claim,

together with other assets, was not a voluntary transfer. This was an act of the law, through the arm of a Federal Court (R. 53), and was beyond the control of the original owner. Such divesting of title has been specifically held not to come within the meaning of Section 3477 Revised Statutes. *Price vs. Forrest*, 173 U. S. 410; 43 L. Ed. 749.

In *Erwin v. United States*, 97 U. S. 392, 397; 24 L. Ed. 1065, 1067, it is stated that this statute "does not embrace cases where there has been a transfer of title by operation of law."

A sale by a special master, directed by order of court in a receivership suit is not a voluntary assignment. The original claimant was powerless to interfere. The court is disposing of the assets in order to obtain proceeds wherewith to pay creditors. The receiver could not decline to comply with the court's orders. He was an officer of the court, subject to its direction. The special master making the sale was in a similar position. Hence, this transfer by the special master to the present petitioner was strictly "by operation of law."

A well-expressed statement of the true nature of this sale by the special master is found in *10 Comp. Dec., 159, 164* where it is said:

> "The sale of the contract by the receivers under the authority and in the manner above mentioned would be by operation of law — that is, the practical working and effect of the law—as much so as the passing of the contract to the receivers appointed by the court. The receivers derive their authority from the act of the court and not from the act of Shreve & Company, and the effect of their appointment is to put the contract from that time into their custody as officers of the court, for the benefit of the parties ultimately proved to be entitled. Their possession is the possession of the court, and the court has power to order a sale of property, including a contract or choses in action, in the hands of its receivers whenever it con-

siders such course necessary for the best interests of all parties, and in such a case the law passes the title to the property sold to the purchaser, and if such purchaser performs and completes the contract payments should be made to him according to the terms and conditions of the contract in all respects the same as payments would have been made to the original contractors had they performed and completed the contract according to the terms thereof and no receivers had been appointed."

The latest pronouncement of this Court upon the true meaning and intent of section 3477 R. S. is the case of *Seaboard Air Line Railway vs. The United States*, 256 U. S. 655; 65 L. Ed. 1149. In that case it is held that a merger or consolidation of two railway companies under sanction of state laws, does not come within the prohibition of the statute. The Court, referring to prior decisions, said:

"In *Erwin vs. United States, Goodman vs. Niblack, and Price vs. Forrest*, certain exceptions to the general language of the section were recognized because not within the evil at which the statute aimed. It was intended to prevent frauds upon the Treasury, and the mischiefs designed to be remedied 'are mainly two: First, the danger that the rights of the Government might be embarrassed by having to deal with several persons instead of one, and by the introduction of a party who was a stranger to the original transaction. Second, that by a transfer of such a claim against the Government to one or more persons not originally in it, the way might be conveniently opened to such improper influences in prosecuting the claim before the departments, the courts, or the Congress, as desperate cases, when the reward is contingent on success, so often suggest.'

"We cannot believe that Congress intended to discourage, hinder or obstruct the orderly merger or consolidation of corporations as the various states might authorize for the public interest. There is no probability that the United States

could suffer injury in respect of outstanding claims from such union of interests, and certainly the result would not be more deleterious than would follow their passing to heirs, devisees, assignees in bankruptcy, or receivers, all of which changes of ownership have been declared without the ambit of the statute. The same principle which required the exceptions heretofore approved applies here."

The appointment of a receiver is merely one of the usual and regular steps in the reorganization of a financially-embarrassed railroad corporation. It is closely akin to reorganization through consolidation, and would seem to have a stronger position under section 5477 Revised Statutes, and to be amply supported by the reasoning of the Court in the last quotation above.

It is, therefore, submitted that claimant has the right to sue for and maintain its claim herein for the services rendered by its predecessor in title as aforesaid.

IV

THREE YEAR STATUTE OF LIMITATION PRESCRIBED BY TRANSPORTATION ACT NOT APPLICABLE

The lower Court makes reference to the three year statute of limitation prescribed by the Transportation Act of 1920. (R. 63). The intimation from this reference might, if unexplained, seem to be that the Court below considered this three year limitation applicable to this case. In a subsequent decision, *Charles E. Schaff, receiver of Missouri, Kansas and Texas Railway Company of Texas vs. United States,* (decided by the Court of Claims March 3, 1924), the position of the lower Court is sufficiently clarified to remove any implication that the present claim could be governed by the three year limitation. In that case the opinion was delivered by

Chief Justice Campbell, who also wrote the opinion below in the present case. In the case referred to, Chief Justice Campbell said:—

> "The only defense attempted to be interposed in this case is the statute of limitations of three years contained in the transportation act of 1920, 41 Stat. 492. Unless that limitation applies the plaintiff is clearly entitled to a judgment. We have indicated in former opinions that the statute does apply to suits by carriers against the Government, but it has not been necessary in these former cases to apply the statute. Expressions in some of these cases may be responsible for the contention here made that the plaintiff's cause of action accrued more than three years before suit brought. But the rule is well settled, and is stated in *Sohn v. Waterson,* 17 Wall. 596. The statute of limitations prescribed by the transportation act of 1920 applies to actions brought against the Government by a carrier to recover its charges, but it does not defeat causes of action which arose before its passage if suit be brought within three years after the passage of the act and within six years from the accrual of the right of action. In other words, the general statute of limitations of six years applicable to suits in the Court of Claims, being jurisdictional, applies to all actions unless waived by statutory enactment relative to the particular case, and the limitation of three years prescribed by the transportation act may apply as above stated. But when suit is brought on a cause of action arising before the late statute, and this statute is alone relied upon, the limitation it prescribes begins to run from the date of the enactment of the statute. *Sohn v. Waterson, supra.*"

Were the three year limitation to be applied in this case, the passage of the Act of Congress setting up the limitation would have wiped out the cause of action, since at the time the Transportation Act became a law more than three years had elapsed from the latest transportation now included in the claim. Such an interpretation would be unconstitutional. In *Koshkonong vs.*

Burton, 104 U. S., 668, 675; 26 L. Ed. 886, 889, it was said:—

> "It was, undoubtedly, within the constitutional power of the Legislature to require, as to existing causes of action, that suits for their enforcement should be barred unless brought within a period less than that prescribed at the time the contract was made or the liability incurred from which the cause of action arose. The exertion of this power is, of course, subject to the fundamental condition that a reasonable time, taking all the circumstances into consideration, be given by the new law for the commencement of an action before the bar takes effect. *Terry v. Anderson*, 95 U. S., 633 (XXIV., 366); *Hawkins v. Burney*, 5 Pet., 457; *Jackson v. Lamphire*, 3 Pet., 280; *Sohn v. Waterson*, 7 Wall. 596 (84 U. S. XXI., 737); *Christmas v. Russell*, 5 Wall. 290 (72 U. S. XVIII., 475); *Sturges v. Crowinshield*, 4 Wheat., 122; *Osborn v. Jaines*, 17 Wis. 576; *Parker v. Kane*, 4 Wis. 1; *Falkner v. Dorman*, 7 Wis. 393."

We think this sufficient for present purposes. However, we also contend that the three year limitation prescribed in Section 424 of the Transportation Act of 1920 (41 Stat. 492) was not intended as an implied repeal *pro tanto* of the general six year limitation on actions in the Court of Claims, and further, that this three year limitation was not intended to broaden the Interstate Commerce Act and to make that Act control transportation furnished to the United States.

CONCLUSION

The necessity for instituting this suit is to correct a ruling of the accounting officers of the Government subsequently shown to be erroneous, but which the accounting officers themselves refused to correct. (R. 56, Finding of Fact IX). Claimant's right to the unpaid portion of the transportation charges in question is established by *United States v. Union Pacific Railway Company*, 52 Ct. Cl. 226, affirmed 249 U. S. 354, 63 L. Ed. 643. In this Union Pacific case all of the classes of persons for the transportation of whom recovery is still sought herein, with the single exception of the army nurse, are specifically considered by the Court and held not to come within the meaning of the expression "troops." "Troops" are defined as "soldiers collectively,—a body of soldiers." They are held not to include individuals traveling separately on different days and to different destinations. The reasoning of the Court in the Union Pacific case applies fully to the army nurse who, as alleged in the petition (R. 4), was not traveling as a part of or in connection with the transportation of "troops" of the United States.

Until this Court had announced its decision in *United States vs. Union Pacific Railway Co., supra*, which was done on March 31, 1919, the right of railroads to their full transportation charges had not been settled beyond controversy. It is not to be contemplated that by an inflexible and arbitrary necessity these railroads were compelled to furnish transportation for the United States during a war period when by common knowledge an extraordinarily large amount of transportation was required, and yet because of an erroneous ruling of the Comptroller of the Treasury which the railroads were contesting, the railroads must either carry indefinitely as unpaid accounts against the United States the total

charges for this vast accumulation of transportation bills, or by accepting payment of that portion of the bills which the Government was willing to pay without question, forfeit the remaining portion of the bills. It cannot be said that the protests were not noticed. These protests were on the bills as submitted to the disbursing officers, and in turn they appeared on the bills when forwarded by the disbursing officers as vouchers to the accounting officers.

In the light of pronouncements from this Court, many of long standing, it is submitted that the method by which the undisputed part of the transportation charges was collected did not destroy the right to collect the unpaid balance.

Respectfully submitted,

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